



## Legal Update

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November 13, 2014

### **Wearing “see through” compression shorts satisfied the “exposure” element of open, gross and lewd and lascivious behavior charge!**

***Commonwealth v Coppinger***, 86 Mass. App. Ct. 234, (2014):

**Background:** On April 5, 2011, the defendant entered a Target store wearing white "see-through" compression shorts. As the defendant entered the store, he asked an employee whether it was "okay" to wear his shorts inside. Several Target employees testified to seeing the defendant's buttocks and the "flesh color of his skin" through the shorts. One witness testified that she could "clearly" see that the defendant was not wearing underwear. Another witness described seeing the outline of the defendant's "semi-erect" penis. The witness also testified that she saw the defendant's testicles through the shorts. Various witnesses described their shock. The police were called and when they arrived on scene, the defendant was pulling on a pair of jeans over his compression shorts. The defendant was arrested and charged with open, gross, lewd and lascivious behavior. The defendant filed a motion to dismiss which was denied. During a trial, the defendant requested that the judge instruct the jury to regard the word expose as "to lay bare or uncover." The judge's instructions to the jury regarding exposure relied upon the Merriam-Webster dictionary which defined "exposure in part as to cause to be visible or open to view, or to display." The jury found the defendant guilty of M. G. L. c. 272, § 16, "open and gross lewdness and lascivious behavior." The defendant appealed and argued that the statute was unconstitutionally vague with regard to whether exposure requires a **naked** display or whether it is possible to expose a body part through a **covering**.

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**

**CONCLUSION:** The Court held that M.G.L. c. 272, § 16, is not unconstitutionally vague and that the defendant exposed himself even though he was wearing a “see-through” covering and was not naked. The Court found that if a person’s genitals, buttocks, or female breasts are clearly visible to the public than it is reasonable to conclude that a person exposed himself or herself. In its analysis, the Court compared the defendant’s shorts to wearing cellophane. One witness described seeing the outline of the defendant’s “semi-erect” penis, displaying something such that it was clearly visible, even though the defendant was wearing shorts. The observations of the witness taken in conjunction with the defendant’s conduct qualified as “exposure,” and exceeded the reasonable bounds of permissible expression, and as a result there was sufficient evidence to prove that the defendant exposed himself pursuant to G.L. c. 272, § 16.

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